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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE M.JAICHANDREN

L.P.A.No.81 of 2002

Management of Pachamalai Estate,
Valparai P.O.642 127. .. Appellant

vs.

Smt.Mani .. Respondent

This Letters Patent Appeal is filed under Clause 15 of the Letters Patent against the judgment and decree, dated 08.02.2002, in C.M.A.No.1332 of 1996, on the file of this Court.

For appellant : Mr.Sanjay Mohan
For respondent : Mr.S.N.Ravichandran

JUDGMENT

M.JAICHANDREN,J.

The present Letters Patent Appeal has been filed against the order passed by the learned single Judge, dated 8.2.2002, made in C.M.A.No.1332 of 1996.

2. It is the case of the appellant/Management that the respondent in the present appeal had filed a claim petition under Section 10(1) of the Workmen's Compensation Act claiming compensation for the death of Selvan, on 18.10.1993.

3. It was stated by the applicant/respondent that the deceased Selvan was employed by the respondent and on 18.10.1993, while the deceased Selvan was doing work in a drench, he had chest pain and died thereafter. The applicant/respondent is a dependant of the deceased-workman being his wife and that the monthly wages of the deceased was Rs.1,000/- and the deceased at the time of his death was aged 45 years. The applicant claimed a lumpsum payment of Rs.67,776/- and prayed for an appropriate award before the Commissioner for Workmen's Compensation, Coimbatore in W.C.Case No.67 of 1994.

4. The appellant herein and the respondent before the Commissioner for Workmen's Compensation, had denied the allegation of the applicant stating that the deceased employee was given proper treatment in the estate Hospital and the death certificate was issued by the Group Medical Officer, dated 20.11.1993, stating that the death of employee, on 18.10.1993, was natural death. Further, it was also stated by the respondent/Management that there was no causal connection between the nature of the employment and the death that had occurred, on 18.10.1993.

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It was also stated that the deceased was paid average monthly income of Rs.960.59/- and that the applicant had to prove that the deceased died on account of an injury caused due to his employment and that it was in the force of his employment.

5. On the other hand, the applicant had stated that the deceased was engaged in the work relating to trench canal cutting work, which required constant bending and has to be performed with the help of an instrument and the nature of work was such that it was hard and strenuous and it had contributed strain and stress on the deceased, which accelerated his death.

6. The Commissioner for Workmen's Compensation had held in its order, dated 16.12.1994, that the strain and stress and the nature of the work, that the deceased was doing at the time of his death, had accelerated his death and therefore, the respondent in W.C.Case No.67 of 1994 and the appellant herein was liable to discharge the liability by paying a sum of Rs.65,716/-.

7. As against the said order, the appellant herein has filed an appeal in C.M.A.No.1332 of 1996 in which an order was passed by the learned single Judge, on 8.2.2002.

8. The learned single Judge had come to the conclusion that the workman had died of heart attack and there was a pre-existing heart condition, which was aggravated by the strain and stress of the deceased, which resulted in his death and held that the Commissioner for Workmen's Compensation was right in holding that the workman had died of an injury arising out of and in the course of his employment. The Learned single Judge had placed reliance on several decisions which are noticed hereunder.

(i) In MANAGEMENT OF VANNIAR ESTATE Vs. KAMATCHI & COMISSIONER FOR WORKMEN'S COMPENSATION (II (1991) ACC 633), wherein it is held that a pre-existing heart condition which was aggravated by the strain of the work of the deceased resulting in his death would constitute accidental injury within the meaning of the Act.

(ii) In MANAGEMENT OF DEVEON ESTATE, NILGIRIS Vs. NABEESA (1991 ACJ 489) it is held that a workman while going to field from the muster suffered from acute chest pain and died instantaneously due to pre-existing heart condition, which was aggravated by the strain of work, it was held that the death arose out of and in the course of employment.

(iii) It has also been held in MADRAS STATE ELECTRICITY BOARD Vs. AMBAZHTINGAL ITHACHUTTI UMMA (1966 II LLJ 12) that the principle in heart cases seems to be that, if death or disability is due to heart attack which resulted from the exertion of the employee in the performance of the duties of his employment, compensation should be awarded.

(iv) A Division Bench of Gujarat High Court in the decision of BHAGWANJI MURUBHAI SODHA AND OTHERS Vs. HINDUSTAN TILES AND CEMENT INDUSTRIES, JAMOAGAR (1977 II LLJ 95) dealing with heart cases has laid down the following principle:

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> The sudden collapse of the worker after he suffered this injury resulting in his chest pain was

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clearly the result of his work connected with the work he was doing. In fact, this was a clear case where the old age got coupled with the employment and, therefore, the employment was a contributory cause and the causal connection being established, the conclusion was inescapable that the accident arose out of and during the course of the employment.

Unless there were circumstances to the contrary, it would be justifiable to resume that the workman was discharging and had discharged the work that was usually assigned to him at the particular time, and it would also be natural to presume that if such work involved some strain, the disease, infirmity or old age, that was existing was likely to contribute to or accelerate the death. In such cases, the pre-existing disease, infirmity or old age is the pre-disposing factor which will supply the necessary causal link to make this a work connected injury, if death takes place while the workman is engaged in his normal work".

9. Learned counsel appearing for the respondent has relied on the judgment of this Court reported in UNITED INDIA INSURANCE CO. LTD., Vs. C.S.GOPALAKRISHNAN (1989 ACJ 794) wherein a bus conductor had died of heart attack while sleeping in the parked bus during rest hours. Even though the employer had contended that the bus conductor died in a natural death when he was not on duty and had no obligation to sleep inside the bus, it was held that there was causal connection between the death and employment and employer liable to pay compensation for the stress and strain of the work due to long hours with limited rest interval had contributed towards the death of the employee which arose out of and during the course of the employment.

10. Learned counsel appearing for the respondent has further relied on the judgment of this Court reported in T.SHANMUGA MUDALIAR Vs. TMT.NOORJAHAN AND OTHERS (2003 Vol.102 F.J.R.90) where the driver bringing a bus to halt at the bus stop and collapsing due to heart attack, it was held that the death had occurred during the course of the employment since the deceased would not have been at the spot where he died but for the fact he was discharging his duty as a driver.

11. On the contrary, the learned counsel appearing for the appellant had relied on the judgment reported in REGIONAL DIRECTOR, E.S.I. CORPORATION Vs. FRANCIS DE COSTA AND ANOTHER (1996 (6) S.C.C.) in support of his contention to show that the accident should have its origin in the employment only then it could be qualified to be arisen out of and in the course of employment of the claimant. In that case, the respondent-employee while going to his place of employment met with an accident at the place which was about only one kilometre away from the factory. As a result of the accident, the employee's collar bone was fractured. While deciding whether the said injury amounted to "employment injury" within the meaning of Section 2(8) of the Employees' State Insurance Act, 1948, entitling the respondent to claim disablement benefit, the Supreme Court had held in the negative stating that a mere road accident, while an employee on his way to his place of employment cannot be said to have its

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origin in his employment in the factory unless it can be shown that the employee was doing something incidental to his employment.

12. The aforesaid decision of the Supreme Court cannot be made applicable to the facts of the present case as in the said case the incident was not in course of employment. The accident had occurred even before the commencement of the duty of the workman. In that case accident had occurred while the employee was travelling on his own bi-cycle to the work place. In such circumstances, the Supreme Court held that the injury was not on account of accident arising out of and in the course of employment. Learned counsel for the appellant has also placed reliance upon a decision of the Bombay High Court reported in 2005 I CLR 595 (Superintending Engineer, Maharashtra State Electricity Board, Sangili & Others vs. Susheela V.Dongade & Ors.). In the said case, the employee died of heart attack in the premises of the employer. The claim for compensation was allowed by the Commissioner for Workmen Compensation and appeal was carried to the High Court. It was observed by the learned Single Judge as under:

> "5.The next submission of the learned Counsel for the appellants is that the death occurred in the premises of the appellants. There is no causal connection between the death and the employment and, therefore, it could not be said that the death was arising out of the employment which is one of the ingredients of S.3 of the Workmen's Compensation Act. On a perusal of the evidence, I find that except the evidence of the deceased workman that he was required to travel long distance for performing the work of meter reading, there is no evidence of any medical expert to demonstrate that such work was so strenuous that it could have resulted in the heart attack. .... However, there is nothing on record to show that the heart attack occurred due to the nature of work performed by the workman concerned." (Emphasis Supplied)

13.It is apparent from the aforesaid decision that the High Court was not convinced that the heart attack occurred due to the nature of the work performed by the workman concerned. In the present case, however, the Commissioner for workman Compensation and the learned Single Judge have come to the conclusion that because of the strenuous nature of the work, the workman suffered heart attack. This essentially is a finding of fact based on some material on record and it cannot be said that such finding is based on surmises and conjunctures or there is absolutely no evidence in support of such conclusion. An appeal under Section 30 of the Workmen Compensation Act can be considered only if there is a substantial question of law. Since, in the present case, the conclusion is based on some materials on record and the Commissioner for Workmen Compensation and the learned Single Judge have concurrently come to the factual conclusion that the death was on account of accident arising out of and in the course of emplomet, we are not inclined to take any different view of the matter.

14.This is not to suggest that in every case where an employee dies in heart attack while on duty, it must be taken that the death is on account of accident arising out of and in the course of employment. Obviously the Court is required to find out on the basis of materials on record whether there is any causal connection between the nature of work and the disease

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suffered by the workman. Obviously any conclusion is to be arrived on the basis of evidence on record and it cannot be laid down as an universal principle that every case of death of employee during working hours on account of heart attack, that, the accident arose out of and in the course of employment.

15.In the above view of the matter, we do not find any compelling reason to differ from the conclusion of the learned Single Judge. Accordingly, the appeal is liable to be dismissed. There will be no order as to costs of the present appeal. Consequently, connected CMP No.5778 of 2002 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

lan

To
1. Commissioner for Workmen's Compensation
Coimbatore.

2. Section Officer,
V.R. Section, High Court, Madras.

+ 1 CC To Mr. S.N.Ravi Chandran, Advocate SR NO. 41687

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